
(1926) 10 BOM CK 0004
In the Bombay High Court
Case No : O.C.J. Suit No. 1476 of 1925

The Central India Spinning Weaving and Manufacturing Co.
Ltd.

APPELLANT

Vs

G.I.P. Railway Co.

RESPONDENT

Date of Decision : 11-10-1926

Acts Referred:

Citation : (1927) 29 BOMLR 414

Hon'ble Judges : Mirza, J

Bench : Single Bench

Judgement

Mirza, J.—This is a Chamber summons taken out by the plaintiffs against the defendants for an order on the defendants to disclose by a supplemental affidavit of documents certain statements made by the defendants' servants with reference to the subject-matter of this suit to the defendants, and which are referred to in certain correspondence of which disclosure has been made. The defendants claim privilege for these documents. When the matter came first before me I made an order on August 27, 1926, ordering the defendants to make a supplemental affidavit disclosing these documents, which were admittedly in their possession and to claim, if so advised, privilege for them. In pursuance of that order the defendants have now filed a supplemental affidavit of documents disclosing these documents, but claiming privilege for them. In the affidavit on behalf of the defendants in showing cause it is stated that these statements are in the nature of evidence exclusively of the defendants' case. It appears, however, that the statements are not proofs of witnesses submitted to the defendants' attorneys, or intended to be so submitted for the purpose of the suit, but are reports made by the defendants' servants to the defendants, regarding the plaintiffs' complaint in respect of the loss of six bales out of the bales consigned by them to the defendants. The documents for which privilege could be claimed would be those only which are in the nature of communications between the lay clients and their professional legal advisers. No privilege, in my opinion, can attach in law to the documents, the subject-matter of the summons.

2. In *L.A. Wallace v. F.G. Jefferson* ILR (1878) 2 Bom. 453 our Appeal Court following the English law on the point decided that the Court had no discretion to refuse to allow inspection of documents relating to matters in question in a suit, if they were not privileged and held that confidential communications between principal and agent, relating to matters in a suit, were not privileged.

3. In *W.D. Ryrie v. Shivshankar Gopalji* ILR (1890) 15 Bom. 7 Farran J. held that documents which recorded the steps taken by the plaintiffs from time to time in prosecuting their claim against the defendant were not privileged. He held also that opinions upon, or steps taken in, reference to a suit in which plaintiffs and defendants were putting forward opposing contentions, could not be said to relate solely to the case of the plaintiffs, and were, therefore, not privileged.

4. Similarly, in *Bipro Doss Dey v. Secretary of State for Indian in Council* ILR (1885) Cal. 655 Pigot J. held that letters written by one of the defendant's servants to another, for the purpose of obtaining information with a view to possible future litigation, were not privileged, even though they might, under the circumstances, be required for the use of the defendant's solicitor. He also held that in order that privilege may be claimed, it must be shown on the face of the affidavit that the documents were prepared or written merely for the use of the solicitor.

5. I, therefore, make the summons absolute. Counsel certified. But as these documents may at the hearing prove to be of little or no value having regard to the preliminary contention of the defendants that the plaintiffs are not entitled to maintain this suit against them and the further contention that the plaintiffs are not entitled to their claim as the goods were consigned under a special risk-note, which absolved the defendants from all liability except under certain defined conditions, the onus of which would be on the plaintiff's, I reserve the costs of the summons to be dealt with by the trial Judge. Counsel certified.